



07-CV-00263-CMP

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CRABAPPLE, LLC

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

C 07-0263 RSL

CASE NO. _____

COMPLAINT FOR WRONGFUL LEVY

Plaintiff Crabapple, LLC by and through its undersigned counsel, for its Complaint for Wrongful Levy against Defendant United States of America, alleges as follows:

I. PARTIES

1. Plaintiff Crabapple, LLC is a Washington State Limited Liability Company. Its address is 3924 204th St. SW #116, in the City of Lynnwood, County of Snohomish, and State of Washington.

2. Defendant is the United States of America.

ORIGINAL

CHICOINE & HALLETT, P.S.

WATERFRONT PLACE ONE, SUITE 803

1011 WESTERN AVENUE

SEATTLE, WA 98104

(206) 223-0800 FAX (206) 467-8170

COMPLAINT FOR
WRONGFUL LEVY - 1

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II. JURISDICTION AND VENUE

3. This action arises under 28 U.S.C. § 1346(e) and 26 U.S.C. § 7426, for the reason that it involves a wrongful levy issued by Defendant.

4. Venue properly lies in this district under 28 U.S.C. §§ 1391(b)(2) and 1402(c) because the subject property is real property located within the Western District of Washington.

III. BACKGROUND

5. Plaintiff was the sole equitable owner of certain property located at 15901 E. Shore Dr., City of Lynnwood, County of Snohomish, State of Washington ("the subject property"), which is within the above entitled judicial district.¹

6. The subject property is more particularly described as follows:

Lot 16, Block 2, Plat of Martha Lake East Shore, according to Plat thereof recorded in Volume 12 of Plats, page 20, records of Snohomish County, Washington

Situate in Snohomish County, Washington
Parcel #00509200201600
15901 E. Shore Drive Lynnwood, WA 98037

7. On August 9, 2006, Defendant United States wrongfully levied on the subject property by issuing a Notice of Seizure. *See* Exhibit A. The levy was issued on Plaintiff, a third party, for the tax liabilities owed by Steve Hyunki Ro.

8. On September 21, 2006, Plaintiff delivered a bond certificate in the amount of \$273,448.58 to prevent the seizure and sale of the property at issue pursuant to § 6325(b)(4). *See* Exhibit B.

¹ After posting a bond and receiving the Certificate of Lien Discharge, Crabapple sold the subject property to a third party. The sale was recorded on January 4, 2007 in Snohomish County.

1 9. On October 27, 2006, the government issued a Notice of Discharge of
2 the property at issue from Federal Tax Lien. *See* Exhibit C.

3
4 **IV. PLAINTIFF'S CAUSE OF ACTION—WRONGFUL LEVY**

5 10. Pursuant to 26 U.S.C. § 7426, if a certificate of discharge is issued to
6 any person under section 6325(b)(4) with respect to any property such person may,
7 within 120 days after the day on which such certificate is issued, bring a civil action
8 against the United States in a district court of the United States for a determination of
9 whether the value of the interest of the United States (if any) in such property is less
10 than the value determined by the Secretary.

11
12 11. Less than 120 days has lapsed since the issuance of the certificate of
13 discharge.

14
15 12. Section 6326(a) provides that a federal tax lien is not valid against “any
16 purchaser...until notice thereof which meets the requirements of subsection (f) has been
17 filed with the Secretary.” Subsection (f) requires that the filing must be recorded in a
18 public index in such *a manner that a reasonable inspection of the index will reveal the*
19 *existence of the lien.* 26 U.S.C. § 6326(f) (emphasis added).

20
21 13. The property wrongfully seized by the United States was owned by
22 Plaintiff at the time of the seizure. Prior to Plaintiff’s purchase, the title to the property
23 was in the name of “Steve Hyunki Ro.” Plaintiff purchased the property at issue from
24 Steve Hyunki Ro on March 11, 2005. Prior to purchasing the property, Plaintiff
25 performed a lien search via a reputable title company. No federal tax liens were found
26

1 under the names, "Steve H Ro," Steve Hyunki," or "Steve Ro." Plaintiff had no
2 notice that the seller was also known by another name, "Hyung Ki Ro."

3
4 14. Prior to the above sale, Defendant had actual notice that the lien was
5 defective and not detected by a reasonable search, which had been performed by a
6 second title company in conjunction with a lending transaction. Defendant did not
7 make any effort to rectify the problem or put third parties on notice.

8
9 15. Plaintiff performed a reasonable and diligent search which did not reveal
10 the existence of the notices of federal tax liens. Plaintiff had no notice of the existence
11 of the federal tax liens. Accordingly, the federal tax lien is not valid against Plaintiff
12 and the seizure was illegal.

13
14 16. In the event that the Court determines that Defendant has a valid interest
15 in the property, Defendant's interest should be limited to the IRS' initial levy request in
16 the amount of \$90,848.14, which was the value of the Mr. Ro's interest in the
17 property.

18 WHEREFORE, Plaintiff, Crabapple, LLC, prays:

19 1. That this Court declare that the claims of the United States to the
20 property described above are of no validity whatsoever;

21 2. That this Court declare that the seizure of the property by the Defendant
22 United States was wrongful, and therefore null and void;

23
24 4. That the Court enjoin the Defendant United States from collecting on the
25 bond filed by Plaintiff;
26

1 5. That the Defendant be forever enjoined and barred from asserting any
2 claim whatsoever adverse to the Plaintiff arising out of liabilities owed by or actions
3 made by Steve Hyunki Ro; and,
4

5 6. For such other and further relief as the Court may deem appropriate.

6 DATED this 20th day of February, 2007.

7 CHICOINE & HALLETT, P.S.
8

9 

10 Cori Flanders-Palmer
WSBA# 34893
11 Darrell D. Hallett WSBA# 00562
1011 Western Avenue, Suite 803
12 Seattle, WA 98104
TEL: 206-223-0800
13 FAX: 206-467-8170

14 James Oliver WSBA# 217
Tatyana A. Gidirimski
15 WSBA# 32780
Short Cressman Burgess PLLC
16 999 Third Avenue, Suite 3000
Seattle, WA 98104-4088
17 TEL: (206) 682-3333
FAX: (206) 340-8856

18 Attorneys for Plaintiff,
19 Crabapple, LLC
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Department of the Treasury
Internal Revenue Service
Form 2433 (Rev. Sept. 2001)



Notice of Seizure

Name and Address
Crabapple LLC
15901 E Shore Drive
Lynnwood, WA 98037

Under the authority in section 6331 of the Internal Revenue Code, and by virtue of a levy from the Area Director of Internal Revenue of the area shown below, I have seized the property below for nonpayment of past due internal revenue taxes.

Due from Hyung Ki Ro Hyung Ki Ro dba Nova Dental Laboratory	Amount \$ 273,448.56	Internal Revenue Area and Territory Seattle 02
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Description of property

Real Property: Lot 16 Block 2 Martha Lake East Shore, as per plat recorded in Volume 2 page 20 Situate in the County of Snohomish, State of Washington

Parcel #00509200201600
15901 E Shore Drive Lynnwood, WA 98037

Property is currently under development for division / construction of 3 new homes on separate parcels.

The Government is seeking the \$90,848.14, which was paid to the seller at settlement.

Signature of Revenue Officer making seizure

Address 1201 Pacific Ave STE 550
Tacoma, WA 98402

Date 8/9/06

Signature of accompanying employee

Address 1201 Pacific Ave STE 550
Tacoma, WA 98402

Date 8/9/06



Contractors Bonding and Insurance Company
1213 Valley Street
P.O. Box 9271
Seattle, WA 98109-0271
(206) 628-7200
(800) 765-2242 Toll Free

Bond to Release Tax Lien

Bond Number SG8815

KNOW ALL BY THESE PRESENTS, That we, Chicago Title Insurance Co., a Missouri corporation, as Principal, and Contractors Bonding and Insurance Company, a Washington Corporation, duly qualified to transact business in the State of Washington are held and firmly bound unto the Secretary of the Treasury of the United States of America, as Obligee, in the sum of Ninety Thousand Eight Hundred and Forty Eight dollars and Fourteen cents (\$ 90,848.14) lawful money of the United States of America, for which payment well and truly to be made, we bind our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, on October 13, 2005 Principal issued title insurance policy number 5716993 on behalf of Crabapple LLC, as insured, in regard to certain real property described as:

Lot 16 Block 3 Martha Lake East Shore, as per plat recorded in Volume 12 page 20, Situate in the County of Snohomish, State of Washington, Parcel #00509200201600.

Said property is commonly described as:

15901 Eastshore Drive, Lynwood, Washington 98037

(hereinafter referred to as "Property"); and

WHEREAS, on August 22, 2006, the Department of the Treasury, Internal Revenue Service issued a Notice of Seizure against Property for unpaid taxes due from Hyung Ki Ro and Hyung Ki Ro dba Nova Dental Laboratory and filed liens in the amounts of:

\$2,642.13, recorded under Instrument Number 200508060197 1

\$35,700.55, recorded under Instrument Number 200405030415 1

62,512.24, recorded under Instrument Number 200405030416 1

\$132,706.07, recorded under Instrument Number 200504180341 1

\$9,098.25, recorded under Instrument Number 200504180340 1

in the Official Records of Snohomish County, Washington; and,


WHEREAS, Principal, on behalf of its insured, disputes the correctness or validity of such liens and desires to remove all liens from Property by filing a bond pursuant to the provisions of Title 26, Subtitle F, Chapter 64, Subchapter C, Part II, Section 6325 (b) (4) (A) (ii), Internal Revenue Code of the United States of America.

NOW, THEREFORE, the Condition of this Obligation is such that: if the Principal shall pay or cause to be paid, any sum which Principal may owe the Oblige under the provisions of Title 26, Subtitle F, Chapter 64, Subchapter C, Part II, Section 6325 (b) (4) (A) (ii), Internal Revenue Code of the United States of America, then this obligation shall be void; otherwise it shall remain in full force and effect.


PROVIDED, HOWEVER, that in no event shall the aggregate liability of the Surety exceed the penal sum of this bond.

Signed, Sealed and Dated this 27 day of Sept., 2006.

Chicago Title a Missouri Corporation
Principal

By: X 
Jesse Condon Vice Pres.

Contractors Bonding and Insurance Company

By: 
Terry L. Robinson, Attorney in Fact





Limited Power of Attorney

Home Office:
1213 Valley Street
PO Box 9271
Seattle, WA 98109-0271
(206) 628-7200

KNOW ALL MEN BY THESE PRESENTS that CONTRACTORS BONDING AND INSURANCE COMPANY, a corporation duly organized and existing under the laws of the State of Washington, and having its principal office in Seattle, King County, Washington, does by these presents make, constitute and appoint TERRY L. ROBINSON, MORRIS L. SCHARHON, LEE B. SCHARHON, SAKORN KEOPANYA, and BETSY KEOPANYA, its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver on behalf of the Company any and all bonds and undertakings of suretyship given for any purpose, provided, however, that no Attorney-in-Fact shall be authorized to execute and deliver any bond or undertaking that shall obligate the Company for any portion of the penal sum thereof in excess of \$100,000, and provided, further, that no Attorney-in-Fact shall have the authority to issue a bid or proposal bond for any project where, if a contract is awarded, any bond or undertaking would be required with a penal sum in excess of \$100,000; and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary; hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions adopted by the Board of Directors of the CONTRACTORS BONDING AND INSURANCE COMPANY on May 20, 2004:

RESOLVED that the President of the Company is authorized to appoint any person as the Company's true and lawful Attorney-in-Fact with power and authority to execute and deliver on behalf of the Company any and all bonds and undertakings of suretyship given for any purpose, subject to such limits as shall be determined by the President of the Company; provided, however, that no such person shall be authorized to execute and deliver any bond or undertaking that shall obligate the Company for any portion of the penal sum thereof in excess of \$100,000,000, and provided, further, that no Attorney-in-Fact shall have the authority to issue a bid or proposal bond for any project where, if a contract is awarded, any bond or undertaking would be required with penal sum in excess of \$100,000,000. Any Attorney-in-Fact authorized to execute a surety bond or undertaking may also be authorized to execute any consent or other documentation incidental to said bond or undertaking, provided such document does not obligate the Company in excess of the limit set forth above.

RESOLVED FURTHER that the authority of the Secretary of the Company to certify the authenticity and effectiveness of the foregoing resolution in any Limited Power of Attorney is hereby delegated to the following persons, the signature of any of the following to bind the Company with respect to the authenticity and effectiveness of the foregoing resolutions as if signed by the Secretary of the Company: Larry A. Byers, Michael D. Burns, Debbie Kidd, Ann Jones, Nancy M. Young, Marci A. Houtz, Rose A. Thorstenson, Hans Rauth, Mark S. Hewitt, Theresa Smith, Tom Dymant, Pat Dorney, Deanna Davis, JoAnn Johnson, Debi Lewis, James L. Neaschke, Cheryl Neaschke, Michael K. Neaschke. Provided, however, that no such person shall have the authority to certify the authenticity of a resolution or Limited Power of Attorney document which serves to appoint himself as Attorney-in-Fact.

RESOLVED FURTHER that the signatures (including certification that the Power of Attorney is still in force and effect) of the President, Notary Public and person certifying authenticity and effectiveness, and the corporate and Notary seals appearing on any Limited Power of Attorney containing this and the foregoing resolutions as well as the Limited Power of Attorney itself and its transmission, may be by facsimile; and such Limited Power of Attorney shall be deemed an original in all aspects.

RESOLVED FURTHER that all resolutions adopted prior to today appointing the above named as Attorney-in-Fact for CONTRACTORS BONDING AND INSURANCE COMPANY are hereby superseded.

IN WITNESS WHEREOF, CONTRACTORS BONDING AND INSURANCE COMPANY has caused these presents to be signed by its President and its corporate seal to be hereunto affixed this 20th day of May, 2004.

CONTRACTORS BONDING AND INSURANCE COMPANY

By: 
Don Sirkin, President

STATE OF WASHINGTON - COUNTY OF KING

On this 20th day of May, 2004, personally appeared DON SIRKIN, to me known to be the President of the corporation that executed the foregoing Limited Power of Attorney and acknowledged said Limited Power of Attorney to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said Limited Power of Attorney.


IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public in and for the State of Washington, residing at Seattle

The undersigned, acting under authority of the Board of Directors of CONTRACTORS BONDING AND INSURANCE COMPANY, hereby certifies, as or in lieu of the Secretary of CONTRACTORS BONDING AND INSURANCE COMPANY, that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Company, and does hereby further certify that the said Power of Attorney is still in force and effect.

GIVEN under my hand at Seattle, this 21 day of September, 2006



PoaDS01.14-US052004



ACCOUNT # _____

Billing No. 57218RIDER

SPIND BONDING SERVICE
ALL TYPES OF CIVIL BONDS
208 JAMES ST. SUITE B
SEATTLE, WA 98104
(206)622-2643

Bond Power # SG8815

BOND AMOUNT \$ 273,448.58 PREMIUM \$ 3,535.00 TERM OF BOND ANNUAL

DATE EXECUTED October 23RD 2006

PRINCIPAL CHICAGO TITLE INSURANCE CO

OBLIGEE SECRETARY OF TREASURY OF THE U.S.

NATURE OF BOND RELEASE OF LIEN

NAME OF COURT _____ BILL: JAMES OLIVER, ATTY

MISC. NEW ANNUAL PREMIUM IS \$5352.00 AGENT TERRY I. ROBINSON

8:59 *Shelley*
~~XXXXXXXXXX~~

OCT 24 2006

CHICAGO TITLE INSURANCE CO
& BURGESS



CHANGE RIDER

Home Office:
1213 Valley Street
P.O. Box 9271
Seattle, WA 98109-0271
(800) 765-CBIC National

TO BE ATTACHED TO AND FORM A PART OF BOND NO. SG8815
ISSUED BY CONTRACTORS BONDING AND INSURANCE COMPANY
ON BEHALF OF CHICAGO TITLE INSURANCE CO., A MISSOURI CORPORATION
RE: BOND TO RELEASE TAX LIEN

IT IS UNDERSTOOD AND AGREED THAT THE FOLLOWING IS CHANGED TO READ AS FOLLOWS:

FROM: PENAL SUM *NINETY THOUSAND EIGHT HUNDRED FOURTY EIGHT AND 14/100* (\$90,848.14)

TO: PENAL SUM *TWO HUNDRED SEVENTY THREE THOUSAND FOUR HUNDRED FOURTY EIGHT 58/100*
(\$273,448.58)

THIS COVERAGE IS TO BE EFFECTIVE 21ST September, 2006

SIGNED, SEALED AND DATED THIS 23RD DAY OF October, 2006

CONTRACTORS BONDING AND INSURANCE COMPANY

ATTORNEY-IN-FACT

TERRY L. ROBINSON



Form 669-G
(Rev. August 2005)Department of the Treasury – Internal Revenue Service
Certificate of Discharge of Property From Federal Tax Lien
(Sec. 6325(b)(4) of the Internal Revenue Code)

Hyung Ki Ro, of 14631 48th Pl. W, City of Edmonds, County of Snohomish, State of Washington, is indebted to the United States for unpaid internal revenue tax in the sum of Two hundred seventy-eight thousand one hundred one Dollars and sixty-four Cents Dollars (\$278,101.64) as evidenced by:

Notice of Federal Tax Lien Serial Number (a)	Recording Information (b)	Date Recorded (c)	Taxpayer Identification Number (d)	Amount Shown on Lien (e)
168786304	200405030415	05-03-2004	XXX-XX-7319	\$ 35700.55
168786404	200405030416	05-03-2004	91-1809611	62512.24
220580305	200504180341	04-18-2005	91-1806911	132706.07
220580205	200504180340	04-18-2005	XXX-XX-7319	9098.25
230309405	200506060197	06-06-2005	91-1806911	2642.13

Liens attaching to all the property of the taxpayer were filed to secure the amount owed. Notices of lien were filed with the Snohomish County Auditor, State of Washington, in accordance with the applicable provisions of law.

The liens listed above are attached to certain property described as:

Lot 16, Block 2, Martha Lake East Shore, as per plat recorded in Volume 2, page 20, situate in the County of Snohomish, State of Washington.

Parcel #00509200201 600

15901 E. Shore Drive, Lynwood WA 98037.


(Use this space for continued description of property)

The Internal Revenue Service acknowledges receipt of Bond #SG8815, Issued by Contractors Bonding and Insurance Company on September 21, 2006, in the amount of Two hundred seventy-three thousand four hundred forty-eight Dollars and fifty-eight Cents (\$273,448.58), and discharges the liens against the above described property. However, the liens remain in effect for all other property, or rights to property, to which the liens are attached.

Signature

Title

Date



Jill Pace, Manager, Technical Services

10-27-06

(Note: Certificate of officer authorized by law to take acknowledgements is not essential to the validity of Discharge of Federal Tax Lien. Rev. Ruling 71-466, 1971-2, C.B. 409.)